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OFFICE OF PETITIONS

In re Application of	:	
Matthias Irgang et al	:	
Application No. 08/892,561	:	ON PETITION
Filed: July 14, 1997	:	
Attorney Docket No. OZ45497FWC	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 3, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 9, 1997, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 10, 1998. A Notice of Abandonment was mailed on July 16, 1998.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)).

The instant petition does not satisfy requirement (3) above.

In this regard, petitioner, no later than July 16, 1998 was aware (or should have been aware) that a petition to revive was necessary. Therefore, in addition to a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must provide a showing as to: (1) the date that petitioner (or petitioner's representative) first became aware of the abandonment of the application; (2) how any delay between the mailing of the Notice of Abandonment and petitioner's (or petitioner's representative's) discovery of the abandoned status of the application occurred; and (3) the cause of any delay between petitioner's (or petitioner's representative's) discovery of the abandoned status of the application and the filing of a petition to revive. *See* 37 CFR 1.137(b)(3).

Further, any renewed petition should include copies of any correspondence or communications between counsel and applicants and/or the assignee, that would rebut any inference that the filing of the first petition to revive was intentionally delayed. This showing should include, but is not limited to, docket records, tickler reports, and file jacket entries for this application.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (703) 872-9306
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Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.


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for Patent Examination Policy